

AMENDED IN SENATE JUNE 8, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1531

**Introduced by Assembly Member ~~House Members House~~
and Florez**

(Principal coauthor: Assembly Member Pescetti)

(Coauthor: Assembly Member Briggs)

February 26, 1999

~~An act to amend Sections 1808.1 and 34520 of the Vehicle Code~~ *An act to amend Sections 1808.1, 34505.6, and 34520 of, and to add Section 34521 to, the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1531, as amended, ~~House. Vehicles:—drivers~~ *Drivers: commercial vehicles.*

(1) Existing law requires the prospective employer of a driver who drives any specified vehicle to obtain a report showing the driver's current public record as recorded by the Department of Motor Vehicles.

Existing law also requires motor carriers and drivers to comply with the controlled substances and alcohol use testing requirements of the United States Secretary of Transportation, as specified.

This bill would make technical, nonsubstantive changes in these provisions.

(2) Existing federal regulations require the implementation of certain controlled substances and alcohol

use testing with regard to prescribed employers of drivers of certain motor vehicles.

Existing state law requires motor carriers and drivers, except as specified, to comply with the described federal regulations, and expressly requires every motor carrier to make specified records available to authorized employees of the Department of the California Highway Patrol.

This bill would revise these latter provisions by authorizing both the Department of the California Highway Patrol and the Department of Motor Vehicles to adopt regulations to implement these provisions.

(3) Existing law requires any drug or alcohol testing consortium, as specified in federal regulations, to mail a copy of all drug-positive and alcohol-positive test result summaries to the Department of the California Highway Patrol within 3 days of the test.

This bill would delete these provisions and, instead, would require drug-testing consortiums to comply with the controlled substances and alcohol use testing requirements of the federal regulations.

(4) The bill would require every driver, subject to the provisions specified in (3) above, to report to a collection center at the direction of his or her employer or consortium for controlled substances or alcohol testing, as specified. The bill would require every driver who tests positive to be advised by his or her employer, or by the drug-testing consortium, of the resources available to the driver for evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances. The bill also would provide for the transmission of a noncompliance form, as described, to a 3rd party administrator, who is under an exclusive contract with the Department of Motor Vehicles, for a driver who has received a verified positive finding for controlled substance or alcohol use.

The bill would require the 3rd party administrator to establish and maintain a separate data base file for all drivers who are currently deemed medically unqualified as described, and would limit access to those records to employers and potential employers of those drivers. The bill would allow access to these files by the Department of the



California Highway Patrol and the Department of Motor Vehicles for statistical and contract oversight purposes only. The bill would require the Department of Motor Vehicles to charge a fee, as specified, to employers who participate in the program for each access request made. The bill would state that its provisions do not affect or abrogate any collection bargaining agreement providing for controlled substance and alcohol use testing. The bill would provide that a violation of the provisions of this paragraph does not constitute a public offense.

~~Existing law requires the prospective employer of a driver who drives any specified vehicle to obtain a report showing the driver's current public record as recorded by the Department of Motor Vehicles.~~

~~Existing law also requires motor carriers and drivers to comply with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation as specified.~~

~~This bill would make technical, nonsubstantive changes in these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1808.1 of the Vehicle Code is~~
2 *SECTION 1. It is the intent of the Legislature in*
3 *enacting this act to ensure that commercial vehicles are*
4 *not operated on the streets and highways of California by*
5 *drivers and owners who do not comply with the*
6 *controlled substances and alcohol use testing*
7 *requirements. Since the enactment of Chapter 832 of the*
8 *Statutes of 1994 (Senate Bill 2034), which adopted the*
9 *controlled substances and alcohol use testing*
10 *requirements of the federal program, experience with*
11 *the federal program has shown that certain modifications*
12 *are necessary to provide the degree of safety to the*
13 *citizens of California that the Legislature intended by the*
14 *enactment of Chapter 832.*

1 SEC. 2. Section 1808.1 of the Vehicle Code is amended
2 to read:

3 1808.1. (a) The prospective employer of a driver who
4 drives any vehicle specified in subdivision ~~(h)~~ (k) shall
5 obtain a report showing the driver's current public record
6 as recorded by the department. For purposes of this
7 subdivision, a report is current if it was issued less than 30
8 days prior to the date the employer employs the driver.
9 The report shall be reviewed, signed, and dated by the
10 employer and maintained at the employer's place of
11 business until receipt of the ~~pull-notice~~ pull-notice system
12 report pursuant to subdivisions (b) and (c). These
13 reports shall be presented upon request to any authorized
14 representative of the Department of the California
15 Highway Patrol during regular business hours.

16 (b) The employer of a driver who drives any vehicle
17 specified in subdivision ~~(h)~~ (k) shall participate in a ~~pull~~
18 ~~notice~~ pull-notice system, which is a process for the
19 purpose of providing the employer with a report showing
20 the driver's current public record as recorded by the
21 department, and any subsequent convictions, failures to
22 appear, accidents, driver's license suspensions, driver's
23 license revocations, or any other actions taken against the
24 driving privilege or certificate, added to the driver's
25 record while the employer's notification request remains
26 valid and uncanceled. As used in this section,
27 participation in the ~~pull-notice~~ pull-notice system means
28 obtaining a requester code and enrolling all employed
29 drivers who drive any vehicle specified in subdivision ~~(h)~~
30 (k) under that requester code.

31 (c) The employer of a driver of any vehicle specified
32 in subdivision ~~(h)~~ (k) shall, additionally, obtain a periodic
33 report from the department at least every six months,
34 except that an employer who enrolls more than 500
35 drivers in the ~~pull-notice~~ pull-notice system under a single
36 requester code shall obtain a report at least every 12
37 months. The employer shall verify that each employee's
38 driver's license has not been suspended or revoked, the
39 employee's traffic violation point count, and whether the
40 employee has been convicted of a violation of Section

1 23152 or 23153. The report shall be signed and dated by
2 the employer and maintained at the employer's principal
3 place of business. The reports shall be presented upon
4 demand to any authorized representative of the
5 Department of the California Highway Patrol during
6 regular business hours.

7 (d) Upon the termination of a driver's employment,
8 the employer shall notify the department to discontinue
9 the driver's enrollment in the ~~pull-notice~~ *pull-notice*
10 system.

11 (e) For the purposes of the ~~pull-notice~~ *pull-notice*
12 system and periodic report process required by
13 subdivisions (b) and (c), owners, other than
14 owner-operators as defined in Section 34624, and
15 employers who drive vehicles described in subdivision
16 ~~(f)~~ (k), shall be enrolled as if they were employees.
17 Family members and volunteer drivers who drive
18 vehicles described in subdivision ~~(f)~~ (k) shall also be
19 enrolled as if they were employees.

20 (f) An employer who, after receiving any driving
21 record pursuant to this section, employs or continues to
22 employ as a driver any person against whom a
23 disqualifying action has been taken regarding his or her
24 driving privilege or required driver's certificate, is guilty
25 of a public offense, and upon conviction thereof, shall be
26 punished by ~~imprisonment~~ *confinement* in ~~the~~ a county
27 jail for not more than six months, by a fine of not more
28 than one thousand dollars (\$1,000), or by both that
29 *confinement and fine and imprisonment*.

30 (g) As part of its inspection of ~~bus-maintenance~~
31 *bus-maintenance* facilities and terminals required at least
32 once every 13 months pursuant to subdivision (c) of
33 Section 34501, the Department of the California Highway
34 Patrol shall determine whether each transit operator, as
35 defined in Section 99210 of the Public Utilities Code, is
36 then in compliance with this section and Section 12804.6,
37 and shall certify each operator found to be in compliance.
38 No funds shall be allocated under Chapter 4
39 (commencing with Section 99200) of Part 11 of Division
40 10 of the Public Utilities Code to a transit operator which

1 the Department of the California Highway Patrol has not
2 certified under this section.

3 (h) A request to participate in the ~~pull-notice~~
4 *pull-notice* system established by this section shall be
5 accompanied by a fee determined by the department to
6 be sufficient to defray the entire actual cost to the
7 department for the notification service. For the receipt
8 of subsequent reports, the employer shall also be charged
9 a fee established by the department pursuant to Section
10 1811. Any employer who qualifies under Section 1812
11 shall be exempt from any fee required under this section.
12 Failure to pay the fee shall result in automatic
13 cancellation of the employer's participation in the
14 notification services.

15 (i) The department, as soon as feasible, may establish
16 an automatic procedure to provide the periodic reports
17 ~~in subdivision (e)~~ to employers, *as required by*
18 *subdivision (c)*, on a regular basis without the need for
19 individual requests.

20 (j) ~~This section shall not be construed to change the~~
21 ~~definition of "employer," "employee," or "independent~~
22 ~~contractor" for any other purpose.~~

23 ~~(k)-(1)~~ The employer of a driver who is employed as
24 a casual driver is not required to enter that driver's name
25 in the ~~pull-notice~~ *pull-notice* system, as otherwise
26 required by subdivision (a). However, the employer of a
27 casual driver shall be in possession of a report of the
28 driver's current public record as recorded by the
29 department, prior to allowing a casual driver to drive any
30 vehicle specified in subdivision ~~(j)~~ (k). A report is
31 current if it was issued less than six months prior to the
32 date the employer employs the driver. ~~As used in~~

33 (2) *For the purposes of* this subdivision, a driver is
34 employed as a ~~casual driver~~ "casual driver" when the
35 employer has employed the driver less than 30 days
36 during the preceding six months. ~~For purposes of this~~
37 ~~subdivision, "casual driver"~~ "Casual driver" does not
38 include any driver who operates a vehicle that requires
39 a passenger transportation endorsement.

40 ~~(j)~~

(k) This section applies to any vehicle for the operation of which the driver is required to have a class 1, class 2, class A, or class B driver's license, a class C license with a hazardous materials endorsement, or a certificate issued pursuant to Section 2512, 12517, 12519, 12520, 12523, or 12523.5, or any passenger vehicle having a seating capacity of not more than 10 persons, including the driver, operated for compensation by a charter-party carrier of passengers or passenger stage corporation pursuant to a certificate of public convenience and necessity or a permit issued by the Public Utilities Commission.

(l) *This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any purpose.*

SEC. 3. Section 34505.6 of the Vehicle Code is amended to read:

34505.6. (a) (1) Upon determining that a motor carrier of property who is operating any vehicle described in subdivision (a), (b), (e), (f), (g), or (k) of Section 34500, or any motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, on a public highway, has done any of the following, the department shall recommend that the Department of Motor Vehicles suspend or revoke the carrier's motor carrier permit, or for interstate operators, the department shall recommend to the ~~federal Highway Administration Office of Motor Carriers~~ *Federal Motor Carrier Safety Administration* that appropriate administrative action be taken against the carrier:

~~(1)~~

(A) Failed to maintain any vehicle of a type described above in a safe operating condition or to comply with ~~the Vehicle Code this code~~ or with ~~applicable~~ regulations contained in Title 13 of the California Code of Regulations *relative to motor carrier safety*, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes a consistent failure so as to justify a suspension or revocation of the motor carrier's motor carrier permit.

1 ~~(2)~~—

2 (B) Failed to enroll all drivers in the pull notice system
3 as required by Section 1808.1.

4 ~~(3)~~—

5 (C) Failed to submit any application or pay any fee
6 required by subdivision (e) or (h) of Section 34501.12
7 within the timeframes set forth in that section.

8 (D) Failed, after obtaining a driver's written
9 authorization, to inquire of the driver's previous
10 employers during the preceding two years from the date
11 of application for employment regarding all of the
12 following:

13 (i) Alcohol tests with a result of 0.04 alcohol
14 concentration or greater.

15 (ii) Verified positive controlled substances test results.

16 (iii) Any refusals to be tested.

17 (iv) Resignation from employment after notification
18 to report for a test and before the test is conducted.

19 (E) Failed, upon written request of an employer or
20 prospective employer with written authorization from
21 the driver, to provide any information described in
22 subparagraph (D).

23 (F) Failed to make reports required under subdivision
24 (g) of Section 34521.

25 (2) No employer may be held civilly liable for good
26 faith compliance with the requirements of subparagraphs
27 (D) to (F), inclusive.

28 (3) For interstate operators, the department shall
29 recommend to the federal Motor Carrier Safety
30 Administration that appropriate administrative action be
31 taken against the carrier.

32 (4) For the purposes of this subdivision, two
33 consecutive unsatisfactory compliance ratings for an
34 inspected terminal assigned because the motor carrier
35 failed to comply with the periodic report requirements of
36 Section 1808.1 or the cancellation of the carrier's
37 enrollment by the Department of Motor Vehicles for
38 nonpayment of required fees is a consistent failure.

(5) *The department shall retain a record, by operator, of every recommendation made pursuant to this subdivision.*

(b) (1) Upon determining that a household goods carrier operating any vehicle described in subdivision (a), (b), (e), (f), (g), or (k) of Section 34500 on a public highway has done any of the following, the department shall recommend that the Public Utilities Commission deny, suspend, or revoke the carrier's operating authority, or for interstate operators, the department shall recommend to the ~~federal Highway Administration~~ *Federal Motor Carrier Safety Administration* that appropriate administrative action be taken against the carrier:

~~(1)~~

(A) Failed to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with ~~the Vehicle Code~~ *this code* or with applicable regulations contained in Title 13 of the California Code of Regulations *relative to motor carrier safety*, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes a consistent failure so as to justify a suspension, revocation, or denial of the motor carrier's operating authority.

~~(2)~~

(B) Failed to enroll all drivers in the pull notice system as required by Section 1808.1.

~~(3)~~

(C) Failed to submit any application or pay any fee required by subdivision (e) or (h) of Section 34501.12 within the timeframes set forth in that section.

~~(e) For~~

(2) *For interstate operators, the department shall recommend to the Federal Motor Carrier Safety Administration that appropriate administrative action be taken against the carrier.*

(3) *For the purposes of this section, two consecutive unsatisfactory compliance ratings for an inspected terminal assigned because the motor carrier failed to*

1 comply with the periodic report requirements of Section
2 1808.1 or the cancellation of the carrier's enrollment by
3 the Department of Motor Vehicles for the nonpayment
4 of required fees is a consistent failure. ~~The~~

5 (4) *The* department shall retain a record, by operator,
6 of every recommendation made pursuant to this section.

7 ~~(d)~~

8 (c) Before transmitting a recommendation pursuant
9 to subdivision (a), the department shall notify the carrier
10 in writing of all of the following:

11 (1) That the department has determined that the
12 carrier's safety record ~~or compliance with Section 1808.1~~
13 ~~or subdivision (e) or (h) of Section 34501.12~~ is
14 unsatisfactory, furnishing a copy of any documentation or
15 summary of any other evidence supporting the
16 determination.

17 (2) That the determination may result in a suspension,
18 revocation, or denial of the carrier's motor carrier permit
19 by the Department of Motor Vehicles, suspension,
20 revocation, of the motor carrier's operating authority by
21 the California Public Utilities Commission, or
22 administrative action by the ~~federal Highway~~
23 ~~Administration Office of Federal Motor Carriers~~ *Carrier*
24 *Safety Administration*.

25 (3) That the carrier may request a review of the
26 determination by the department within five days of its
27 receipt of the notice required under this subdivision. If a
28 review pursuant to this paragraph is requested by the
29 carrier, the department shall conduct and evaluate that
30 review prior to transmitting any notification pursuant to
31 subdivision (a) or (b).

32 ~~(e)~~

33 (d) Upon receipt of a written recommendation from
34 the department that a motor carrier permit or operating
35 authority be suspended, revoked, or denied, the
36 Department of Motor Vehicles or *the* Public Utilities
37 Commission, as appropriate, shall, pending a hearing in
38 the matter pursuant to Section 34623 or appropriate
39 Public Utilities Commission authority, suspend the motor
40 carrier permit or operating authority. The written

1 recommendation shall specifically indicate compliance
2 with subdivision ~~(d)~~ (c).

3 *SEC. 4. Section 34520 of the Vehicle Code is amended*
4 *to read:*

5 34520. (a) Motor carriers, *drug-testing consortiums*,
6 and drivers shall comply with the controlled substances
7 and alcohol use, transportation, and testing requirements
8 of the United States Secretary of Transportation as set
9 forth in Part 382 (commencing with Section 382.101) of,
10 and Sections 392.5(a)(1) and 392.5(a)(3) of, Title 49 of
11 the Code of Federal Regulations. *The department and*
12 *the Department of Motor Vehicles may adopt regulations*
13 *to implement this section.*

14 (b) (1) Every motor carrier *and drug-testing*
15 *consortiums* shall make available for inspection, upon the
16 request of an authorized employee of the department *or*
17 *the Department of Motor Vehicles*, copies of all results
18 and other records pertaining to controlled substances and
19 alcohol use ~~and~~ testing conducted pursuant to federal
20 law, as specified in subdivision (a), including those
21 records contained in individual driver qualification files.

22 (2) For the purposes of complying with the
23 return-to-duty alcohol or controlled substances test
24 requirements, or both, of Section 382.309 of Title 49 of the
25 Code of Federal Regulations and the followup alcohol or
26 controlled substances test requirements, or both, of
27 Section 382.311 of that title, the department *and the*
28 *Department of Motor Vehicles* may use those test results
29 to monitor drivers who are motor carriers.

30 (3) No evidence derived from a positive test result in
31 the possession of a motor carrier, *drug-testing*
32 *consortium, medical review officer, or substance-abuse*
33 *professional* shall be admissible in a criminal prosecution
34 concerning unlawful possession, sale, or distribution of
35 controlled substances.

36 ~~(c) Any drug or alcohol testing consortium, as defined~~
37 ~~in Section 382.107 of Title 49 of the Code of Federal~~
38 ~~Regulations, shall mail a copy of all drug and alcohol~~
39 ~~positive test result summaries to the department within~~
40 ~~three days of the test. This requirement applies only to~~

~~1 drug and alcohol positive tests of those drivers employed~~
~~2 by motor carriers who operate terminals within this state.~~

~~(d)~~ A transit agency receiving federal financial assistance under Section 3, 9, or 18 of the Federal Transit Act, or under Section 103(e)(4) of Title 23 of the United States Code, as defined in Section 653.7 of Title 49 of the Code of Federal Regulations, concerning controlled substance use, and Section 654.7 of Title 49 of the Code of Federal Regulations, concerning alcohol abuse, shall comply with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation as set forth in Part 653 (commencing with Section 653.1) of, and Part 654 (commencing with Section 654.1) of, Title 49 of the Code of Federal Regulations.

~~(e)~~

~~(d) (1)~~ It is a misdemeanor, punishable by ~~imprisonment~~ confinement in ~~the~~ a county jail for six months ~~and~~, by a fine not to exceed five thousand dollars (\$5,000), or by both ~~the~~ that ~~imprisonment~~ confinement and fine, for any person to willfully violate this section. ~~As~~

(2) As used in this subdivision, “willfully” has the same meaning as defined in Section 7 of the Penal Code.

~~(f)~~

~~(e)~~ This section does not apply to a driver operating any of the vehicles specified in Section 35002 if that driver is participating in a substance-abuse detection program sponsored by the driver’s employer.

~~(f)~~ This section does not apply to a peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, who is authorized to drive vehicles described in Section 34500 if that peace officer is participating in a ~~substance-abuse~~ substance-abuse detection program within the scope of his or her employment.

SEC. 5. Section 34521 is added to the Vehicle Code, to read:

34521. (a) Every driver subject to Section 34520 shall report to a collection center at the direction of his or her employer or consortium for controlled substances or alcohol use testing.

1 (b) No driver may avoid the test by resigning
2 employment or consortium membership unless the
3 driver surrenders his or her commercial driver's license
4 to the Department of Motor Vehicles. Failure of any
5 driver to comply with this subdivision shall constitute a
6 refusal to test within the meaning of subdivision (g).

7 (c) The collection center shall do all of the following:

8 (1) Collect specimens as required by Part 382
9 (commencing with Section 382.101) of Title 49 of the
10 Code of Federal Regulations.

11 (2) Transmit each driver's specimen to a drug-testing
12 laboratory as required by Title 40 (commencing with
13 Section 40.1) of, and Part 382 (commencing with Section
14 382.101) of Title 49, of the Code of Federal Regulations.

15 (3) Report to the employer or consortium any failure
16 of the driver to make himself or herself available for
17 testing, either by nonappearance or refusal, by executing
18 and transmitting to the employer or consortium a
19 noncompliance form.

20 (d) The drug-testing laboratory shall convey its test
21 results to the designated medical review officer.

22 (e) If the designated medical review officer makes a
23 verified positive finding pursuant to Part 382
24 (commencing with Section 382.101) of Title 49 of the
25 Code of Federal Regulations, the medical review officer
26 shall advise the driver and the employer or drug-testing
27 consortium within three business days and shall execute
28 and transmit a noncompliance form to the third party
29 administration who is under an exclusive contract with
30 the Department of Motor Vehicles.

31 (f) Every driver who has been notified by a medical
32 review officer of a verified positive finding pursuant to
33 Part 382 (commencing with Section 382.101) of Title 49
34 of the Code of Federal Regulations shall be advised by the
35 employer or by the drug-testing consortium of the
36 resources available to the driver for evaluating and
37 resolving problems associated with the misuse of alcohol
38 and the use of controlled substances, including the names,
39 addresses, and telephone numbers of substance-abuse
40 professionals and counseling and treatment programs.

1 (g) *The failure or refusal of any driver to submit to the*
2 *test shall be reported by the employer or consortium by*
3 *using the noncompliance form prescribed by subdivision*
4 *(j) to a third party administrator who is under an*
5 *exclusive contract with the Department of Motor*
6 *Vehicles within three business days.*

7 (h) *If a driver fails to comply with any requirement of*
8 *this section, the driver is deemed to be medically*
9 *unqualified to operate a motor vehicle subject to this*
10 *division.*

11 (i) (1) *The third party administrator under contract*
12 *with the Department of Motor Vehicles shall establish*
13 *and maintain a separate data base file for all drivers who*
14 *are currently deemed medically unqualified under this*
15 *section. This separate data base file shall be the exclusive*
16 *repository of all information maintained pursuant to this*
17 *section.*

18 (2) *Upon the request of an employer or a potential*
19 *employer who holds a requester code, as described in*
20 *Section 1808.1, regarding an individual driver, the third*
21 *party administrator shall inform that employer of the*
22 *existence or nonexistence in the file of a current*
23 *noncompliance form, as described in subdivision (j),*
24 *involving that driver.*

25 (3) *Upon return to duty clearance by a*
26 *substance-abuse professional, the noncompliance form*
27 *shall be removed from an individual driver's data base*
28 *file.*

29 (4) *Except as provided in paragraph (2), the separate*
30 *data base file required by this subdivision shall be*
31 *accessible only to the department and the Department of*
32 *Motor Vehicles for statistical and contractual oversight*
33 *purposes.*

34 (j) *The Department of Motor Vehicles shall develop a*
35 *"noncompliance form" for reporting failures to comply*
36 *with this section. The form shall specify each possible act*
37 *of noncompliance by a driver under this section. The*
38 *form shall provide for the collection of each driver's*
39 *name, social security number, and commercial driver's*
40 *license number. The form shall be made available upon*

request to each employer, drug-testing consortium, and medical review officer. The noncompliance form shall be in the form of a declaration.

(k) No employer or drug-testing consortium shall be held civilly liable for good faith compliance with this section. No medical review officer shall be held civilly liable for good faith compliance with this section.

(l) An employer holding a requester code who participates under this section shall pay a fee for each request made under paragraph (2) of subdivision (i) in an amount determined by the Department of Motor Vehicles to be sufficient to defray the entire actual cost to the department for administrating and contracting under this section.

(m) This section shall not be construed to affect or abrogate any collective bargaining agreement between an employer and an employee organization that provides for controlled substance and alcohol use testing.

(n) Notwithstanding Section 40000.1 or any other provision of law, a violation of this section is not a public offense.

amended to read:

~~1808.1. (a) The prospective employer of a driver who drives any vehicle specified in subdivision (k) shall obtain a report showing the driver's current public record as recorded by the department. For the purposes of this subdivision, a report is current if it was issued less than 30 days prior to the date the employer employs the driver. The report shall be reviewed, signed, and dated by the employer and maintained at the employer's place of business until receipt of the pull notice system report pursuant to subdivisions (b) and (c). These reports shall be presented upon request to any authorized representative of the Department of the California Highway Patrol during regular business hours.~~

~~(b) The employer of a driver who drives any vehicle specified in subdivision (k) shall participate in a pull notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the~~

1 department, and any subsequent convictions, failures to
2 appear, accidents, driver's license suspensions, driver's
3 license revocations, or any other actions taken against the
4 driving privilege or certificate, added to the driver's
5 record while the employer's notification request remains
6 valid and uncanceled. As used in this section,
7 participation in the pull-notice system means obtaining a
8 requester code and enrolling all employed drivers who
9 drive any vehicle specified in subdivision (k) under that
10 requester code.

11 (e) The employer of a driver of any vehicle specified
12 in subdivision (k) shall, additionally, obtain a periodic
13 report from the department at least every six months,
14 except that an employer who enrolls more than 500
15 drivers in the pull-notice system under a single requester
16 code shall obtain a report at least every 12 months. The
17 employer shall verify that each employee's driver's
18 license has not been suspended or revoked, the
19 employee's traffic violation point count, and whether the
20 employee has been convicted of a violation of Section
21 23152 or 23153. The report shall be signed and dated by
22 the employer and maintained at the employer's principal
23 place of business. The reports shall be presented upon
24 demand to any authorized representative of the
25 Department of the California Highway Patrol during
26 regular business hours.

27 (d) Upon the termination of a driver's employment,
28 the employer shall notify the department to discontinue
29 the driver's enrollment in the pull-notice system.

30 (e) For the purposes of the pull-notice system and the
31 periodic report process required by subdivisions (b) and
32 (c), owners, other than owner-operators as defined in
33 Section 34624, and employers who drive vehicles
34 described in subdivision (k), shall be enrolled as if they
35 were employees. Family members and volunteer drivers
36 who drive vehicles described in subdivision (k) also shall
37 be enrolled as if they were employees.

38 (f) An employer who, after receiving any driving
39 record pursuant to this section, employs or continues to
40 employ as a driver any person against whom a

1 ~~disqualifying action has been taken regarding his or her~~
2 ~~driving privilege or required driver's certificate, is guilty~~
3 ~~of a public offense, and upon conviction thereof, shall be~~
4 ~~punished by imprisonment in a county jail for not more~~
5 ~~than six months, by a fine of not more than one thousand~~
6 ~~dollars (\$1,000), or by both that imprisonment and fine.~~

7 ~~(g) As part of its inspection of bus-maintenance~~
8 ~~facilities and terminals required at least once every 13~~
9 ~~months pursuant to subdivision (c) of Section 34501, the~~
10 ~~Department of the California Highway Patrol shall~~
11 ~~determine whether each transit operator, as defined in~~
12 ~~Section 99210 of the Public Utilities Code, is then in~~
13 ~~compliance with this section and Section 12804.6, and~~
14 ~~shall certify each operator found to be in compliance. No~~
15 ~~funds shall be allocated under Chapter 4 (commencing~~
16 ~~with Section 99200) of Part 11 of Division 10 of the Public~~
17 ~~Utilities Code to a transit operator which the Department~~
18 ~~of the California Highway Patrol has not certified under~~
19 ~~this section.~~

20 ~~(h) A request to participate in the pull-notice system~~
21 ~~established by this section shall be accompanied by a fee~~
22 ~~determined by the department to be sufficient to defray~~
23 ~~the entire actual cost to the department for the~~
24 ~~notification service. For the receipt of subsequent~~
25 ~~reports, the employer also shall be charged a fee~~
26 ~~established by the department pursuant to Section 1811.~~
27 ~~Any employer who qualifies under Section 1812 shall be~~
28 ~~exempt from any fee required under this section. Failure~~
29 ~~to pay the fee shall result in automatic cancellation of the~~
30 ~~employer's participation in the notification services.~~

31 ~~(i) The department, as soon as feasible, may establish~~
32 ~~an automatic procedure to provide the periodic reports~~
33 ~~to employers, as required by subdivision (c), on a regular~~
34 ~~basis without the need for individual requests.~~

35 ~~(j) The employer of a driver who is employed as a~~
36 ~~casual driver is not required to enter that driver's name~~
37 ~~in the pull-notice system, as otherwise required by~~
38 ~~subdivision (a). However, the employer of a casual driver~~
39 ~~shall be in possession of a report of the driver's current~~
40 ~~public record as recorded by the department, prior to~~

~~1 allowing a casual driver to drive any vehicle specified in
2 subdivision (k). A report is current if it was issued less
3 than six months prior to the date the employer employs
4 the driver.~~

~~5 For the purposes of this subdivision a driver is
6 employed as a “casual driver” when the employer has
7 employed the driver less than 30 days during the
8 preceding six months. “Casual driver” does not include
9 any driver who operates a vehicle that requires a
10 passenger transportation endorsement.~~

~~11 (k) This section applies to any vehicle for the
12 operation of which the driver is required to have a class
13 1, class 2, class A, or class B driver’s license, a class C license
14 with a hazardous materials endorsement, or a certificate
15 issued pursuant to Section 2512, 12517, 12519, 12520, 12523,
16 or 12523.5, or any passenger vehicle having a seating
17 capacity of not more than 10 persons, including the
18 driver, operated for compensation by a charter party
19 carrier of passengers or passenger stage corporation
20 pursuant to a certificate of public convenience and
21 necessity or a permit issued by the Public Utilities
22 Commission.~~

~~23 (l) This section may not be construed to change the
24 definition of “employer,” “employee,” or “independent
25 contractor” for any purpose.~~

~~26 SEC. 2. Section 34520 of the Vehicle Code is amended
27 to read:~~

~~28 34520. (a) Motor carriers and drivers shall comply
29 with the controlled substances and alcohol use and testing
30 requirements of the United States Secretary of
31 Transportation as set forth in Part 382 (commencing with
32 Section 382.101) of Title 49 of the Code of Federal
33 Regulations.~~

~~34 (b) (1) Every motor carrier shall make available for
35 inspection, upon the request of an authorized employee
36 of the department, copies of all results and other records
37 pertaining to controlled substances and alcohol use and
38 testing conducted pursuant to federal law, as specified in
39 subdivision (a), including those records contained in
40 individual driver qualification files.~~

1 ~~(2) For the purposes of complying with the~~
2 ~~return to duty alcohol or controlled substances test~~
3 ~~requirements, or both, of Section 382.309 of Title 49 of the~~
4 ~~Code of Federal Regulations and the followup alcohol or~~
5 ~~controlled substances test requirements, or both, of~~
6 ~~Section 382.311 of that title, the department may use~~
7 ~~those test results to monitor drivers who are motor~~
8 ~~carriers.~~

9 ~~(3) No evidence derived from a positive test result in~~
10 ~~the possession of a motor carrier shall be admissible in a~~
11 ~~criminal prosecution concerning unlawful possession,~~
12 ~~sale, or distribution of controlled substances.~~

13 ~~(c) Any drug or alcohol testing consortium, as defined~~
14 ~~in Section 382.107 of Title 49 of the Code of Federal~~
15 ~~Regulations, shall mail a copy of all drug and alcohol~~
16 ~~positive test result summaries to the department within~~
17 ~~three days of the test. This requirement applies only to~~
18 ~~drug and alcohol positive tests of those drivers employed~~
19 ~~by motor carriers who operate terminals within this state.~~

20 ~~(d) It is a misdemeanor, punishable by imprisonment~~
21 ~~in a county jail for six months, by a fine not to exceed five~~
22 ~~thousand dollars (\$5,000), or by both that imprisonment~~
23 ~~and fine, for any person to willfully violate this section.~~

24 ~~As used in this subdivision, “willfully” has the same~~
25 ~~meaning as defined in Section 7 of the Penal Code.~~

26 ~~(e) This section does not apply to a driver operating~~
27 ~~any of the vehicles specified in Section 35002 if that driver~~
28 ~~is participating in a substance-abuse detection program~~
29 ~~sponsored by the driver’s employer.~~

30 ~~(f) This section does not apply to a peace officer, as~~
31 ~~defined in Section 830.1 or 830.2 of the Penal Code, who~~
32 ~~is authorized to drive vehicles described in Section 34500~~
33 ~~if that peace officer is participating in a substance-abuse~~
34 ~~detection program within the scope of his or her~~
35 ~~employment.~~